



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0335; FRL-9951-13-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Adoption of Control Techniques Guidelines for Control of Volatile Organic
Compound Emissions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the Commonwealth of Virginia (Virginia). These revisions include amendments to the Virginia Department of Environmental Quality's (VADEQ) regulations and address the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0335 at <http://www.regulations.gov>, or via email to fernandez.cristina@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814-3409, or by e-mail at jones.leslie@epa.gov.

SUPPLEMENTARY INFORMATION: On February 1, 2016, Virginia, through the VADEQ, submitted three revisions to the Virginia SIP concerning the adoption of EPA CTGs for offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings sources in the specific portion of Virginia known as the Northern Virginia Volatile Organic Compound Emissions Control Area.

I. Background

On March 27, 2008, EPA revised the 8-hour ozone standard to a new 0.075 parts per million

(ppm) level (73 FR 16436). On May 21, 2012, EPA finalized designations for the 2008 8-hour ozone NAAQS (77 FR 30087) in which the Washington, DC-MD-VA area was designated marginal nonattainment. *See* 40 CFR 81.347. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACT), including RACT, for sources of emissions.¹ However, the northern portion of Virginia is also part of the Metropolitan Statistical Area of the District Columbia which is in the ozone transport region (OTR) established under section 184(a) of the CAA. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must implement RACT with respect to sources of volatile organic compounds (VOCs) in the state covered by a CTG issued before or after November 15, 1990. In addition, pursuant to CAA section 184(b)(2), stationary sources in states or portions of a state within the OTR that emit at least 50 tons per year of VOCs shall be considered major stationary sources subject to requirements applicable to major stationary sources if the area were classified as a Moderate nonattainment area including requirements for CTGs and RACT.

Thus, Virginia must implement for its SIP RACT with respect to sources of VOCs covered by CTGs in the northern portion of Virginia that is part of the Metropolitan Statistical Area of the District Columbia and within the OTR (which Virginia refers to as the “Northern Virginia Volatile Organic Compound Emissions Control Area”).² CAA section 184(b)(1)(B) and (2).

CTGs are documents issued by EPA intended to provide state and local air pollution control

¹ EPA defines RACT as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” 44 FR 53761 (September 17, 1979).

² The northern portion of Virginia is defined as the Northern Virginia Volatile Organic Compound Emissions Control Area in 9VAC5-20-206 (General Provisions).

authorities information to assist them in determining RACT for VOC from various sources. Section 183(e)(3)(c) provides that EPA may issue a CTG in lieu of a national regulation as RACT for a product category where EPA determines that the CTG will be substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

In 1993, EPA published a draft CTG for offset lithographic printing (58 FR 59261). After reviewing comments on the draft CTG and soliciting additional information to help clarify those comments, EPA published an alternative control techniques (ACT) document in June 1994 that provided supplemental information for states to use in developing rules based on RACT for offset lithographic printing. In 1994, EPA developed an ACT document for industrial cleaning solvents. No previous EPA actions have been taken regarding miscellaneous industrial adhesives application operations. In 1978, EPA published a CTG for miscellaneous metal parts and products and in 1994 EPA published an ACT for the coating of automotive/transportation and business machine plastic parts surface coatings. After reviewing the 1978 and 1993 CTGs and 1994 ACTs for these industries, conducting a review of currently existing state and local VOC emission reduction approaches for these industries, and taking into account any information that has become available since then, EPA developed new CTGs entitled *Control Techniques Guidelines for Offset Lithographic and Letterpress Printing* (Publication No. EPA

453/R-06-002; September 2006); *Control Techniques Guidelines for Industrial Cleaning Solvents* (Publication No. EPA 453/R-06-001; September 2006); *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* (Publication No. EPA 453/R-08-005; September 2008); and *Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings* (Publication No. EPA 453/R-08-003; September 2008). The CTG recommendations may not apply to a particular situation based upon the circumstances of a specific source. Regardless of whether a state chooses to implement the recommendations contained within the CTGs through state rules, or to issue state rules that adopt different approaches for RACT for VOCs, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

II. Summary of SIP Revisions and EPA Analysis

On February 1, 2016, Virginia, through the VADEQ, submitted three revisions to the Virginia SIP concerning the adoption of the EPA CTGs for offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area. These regulations are contained in the following Articles in regulation 9VAC5 Chapter 40, Existing Stationary Sources: Article 56, Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 56.1, Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 57, Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; Article 58, Emission Standards for Miscellaneous Industrial Adhesive

Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard; and Article 59, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard. These regulations: (1) establish applicability for offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings at facilities; (2) establish exemptions; (3) establish emission limitations and work practice requirements; and (4) establish monitoring, notification, record-keeping and reporting requirements.

The SIP revisions also amend regulations 9VAC5 Chapter 40, Existing Stationary Sources, Article 34 and Article 53. In regulation 9VAC5 Chapter 40, Article 34, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems, section 4760, was amended to exempt VOC sources in the Northern Virginia Volatile Organic Compound Emissions Control Area from its provisions. *See* 9VAC5-40-4760. On and after February 1, 2017, these sources are subject to Article 59, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard. Regulation 9VAC5 Chapter 40, Article 53, Emission Standards for Lithographic Printing Processes, section 7800, was amended to exempt offset lithographic printing processes from its provisions and refers applicable facilities to the provisions in Article 56.1, Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard.

See 9VAC5-40-7800. Virginia has also amended supporting definitions in 9VAC5, Chapter 20, General Provisions which relate to the new CTG standards.

EPA's review of the new and revised regulations submitted by VADEQ finds that the submitted revisions of regulation 9VAC5, Chapter 40, Existing Stationary Sources, and 9VAC5, Chapter 20, General Provisions, address the requirements to adopt RACT for sources located in Virginia covered by EPA's CTG recommendations for control of VOC emissions in accordance with CAA section 184(b)(1)(B) and (2) for the following categories: offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. EPA also finds the Virginia regulations, which adopt the equivalent of the specific EPA CTG recommendations, address CAA requirements for RACT in sections 172 and 182 as referenced by section 184. More detailed information on these provisions as well as a detailed summary of EPA's review and rationale for proposing to approve these SIP revisions can be found in the Technical Support Document (TSD) for this action which is available on line at www.regulations.gov, Docket number EPA-R03-OAR-2016-0335.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revisions submitted on February 1, 2016, which consist of amendments to regulation 9VAC5 Chapter 40, Existing Stationary Sources and 9VAC5 Chapter 20, General Provisions, and address the requirement to adopt RACT for sources located in the Northern Virginia VOC Emissions Control Area covered by EPA's CTG standards in accordance with CAA requirements in sections 172, 182 and 184 for the following categories:

offset lithographic printing and letterpress printing, industrial cleaning solvent operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a

legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205,

211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the VADEQ regulations regarding control of VOC emissions from offset lithographic printing and letterpress printing, industrial solvent cleaning operations, miscellaneous industrial adhesives, and miscellaneous metal and plastic parts coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area as described in section II of this proposed action. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the RACT rules for sources in northern Virginia in this action do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 10, 2016.

Shawn M. Garvin,
Regional Administrator,
Region III.

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